

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSHUA JAMES BIRDRAFTLER,

Defendant.

Cause No. CR-19-57-GF-BMM

ORDER

The United States government has filed a motion in limine seeking to avoid a cautionary instruction being given at trial or a pre-trial ruling on the admissibility of the agent's reasoning for failing to record the interview if a cautionary instruction is given. (Doc. 42). The Court conducted a hearing on in this matter and in *United States v. Mychal Thomas Damon*, No. 19-45-GF-BMM, on January 16, 2020.

The parties reached an agreement in open court regarding the language of the instruction that the Court would give the jury in the event that the government introduces the recording of the interview with the defendant. The parties agreed to the following jury instruction:

The government has introduced a recording of a statement made by [the Defendant]. There is not a complete recording of the

entire interview with [the Defendant]. This Court has expressed a preference that interviews be recorded in their entirety. In considering the weight of any statement made by [the Defendant] you should take into account all the circumstances under which the statement was given including whether the entire statement was recorded by video or audio means. It is up to the jury to decide what weight to give any statement but you should weigh any statement carefully and view with caution the fact that the agents obtained [Defendant's] statement without recording the entire interview.

In light of the parties' agreement on the language of the appropriate cautionary instruction, **IT IS ORDERED** that the Government's Motion in Limine (Doc. 42) is **DENIED** as moot.

DATED this 16th day of January, 2020.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with "Brian" on top and "Morris" on the bottom, both written in a single continuous line.

Brian Morris
United States District Court Judge